

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

**BENCHMARK RESOURCES
CORPORATION, GENTRY
CORPORATION, and SUNRISE
HOLDING, INC.,**

Plaintiffs,

V.

THE UNITED STATES OF AMERICA,

Defendant.

No. 03-178L

Honorable Christine Odell Cook Miller

**UNOPPOSED MOTION FOR EXTENSION OF TIME
TO FILE REPLY IN SUPPORT OF UNITED STATES’
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION
OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

As the Court is aware, the present Scheduling Order requires that the United States file its reply brief in support of its Motion to Dismiss for Lack of Subject Matter Jurisdiction or, in the Alternative, for Summary Judgment (“Motion to Dismiss”) by September 20, 2006. The United States respectfully requests an eight day extension of time, to and including September 28, 2006, in which to file its reply brief. Plaintiffs consent to this request for an extension of time.

Plaintiffs’ Response to Defendant’s Motion to Dismiss for Lack of Subject Matter Jurisdiction or, in the Alternative for Summary Judgment (“Plaintiffs’ Response”) relies upon a report executed by a professional engineer. While the United States does not believe that the report is relevant to the issues raised in the Motion to Dismiss, the United States believes that consultation with an expert is necessary and appropriate to understand and reply to Plaintiffs’ assertions. Further, the United States is still evaluating whether it will be necessary to attach an

opposing declaration by an expert witness. Thus, on September 12, 2006, the United States approved a contract for the retention of a consulting expert and requested that he complete his review of Plaintiffs' submission as expeditiously as possible. The additional time will allow the expert to complete his review, will provide the United States a reasonable amount of time to confer with the consulting expert regarding the report attached to Plaintiffs' Response, and will allow the United States to make a final determination regarding whether it will be necessary to submit an opposing expert declaration.

Plaintiffs' Response also relies upon an affidavit executed by Darold Proctor the principle owner of two of the Plaintiffs. The affidavit attaches a number of letters that were allegedly sent to the United States Department of Interior almost five years ago. The United States does not believe that these letters were previously produced by Plaintiffs in this litigation. The United States seeks the additional time for the Department of the Interior to search its records to determine whether the letters were actually received and, if received, whether responses were provided. Moreover, the individual at the Department of the Interior most knowledgeable regarding this matter has been or will be out of the office most of the week of September 10, 2006.

Finally, the United States seeks additional time to file its reply because counsel for the United States will be in depositions in the case of Cheyenne River Sioux Tribe v. United States, Docket No. 03-600L (Fed. Cl.) from September 18-22.

Defendant has contacted Plaintiffs' counsel regarding the extension requested in this motion and has been informed that Plaintiffs consent to the request.

For all of these reasons, the United States requests that the Court extend the deadline for the filing of its reply in support of its Motion to Dismiss to and including September 28, 2006.

September 14, 2006

Respectfully Submitted,

SUE ELLEN WOOLDRIDGE
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/s/ James D. Gette

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